

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 19, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1329

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF LA CROSSE,

Plaintiff-Respondent,

v.

RICHARD H. MASRUD,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for La Crosse County: PETER G. PAPPAS, Judge. *Affirmed.*

EICH, C.J.¹ Richard Masrud appeals from a judgment, entered after a jury trial, convicting him of operating a motor vehicle with a prohibited blood-alcohol concentration. He raises a single issue on appeal: whether the arresting officer was justified in stopping him for a traffic violation (after which the officer gathered the evidence supporting the prohibited blood-alcohol charge). We reject his challenge to the stop and affirm the judgment.

¹ This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

Masrud, driving at the 45 m.p.h. speed limit, entered an intersection on a yellow light. The light turned red when his vehicle was halfway through the intersection. A police officer, observing Masrud, followed him and stopped his vehicle. Subsequent events led to his arrest on the blood-alcohol charge.

Masrud moved to suppress the arrest on grounds that the officer lacked any justification for stopping him. The trial court denied the motion and the case proceeded to trial on the underlying charge, with the result indicated above.

In order to justify a traffic stop, the officer must have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [stopping an individual for questioning]." *State v. Washington*, 120 Wis.2d 654, 660, 358 N.W.2d 304, 307 (Ct. App. 1984) (quoted sources omitted), *aff'd*, 134 Wis.2d 108, 396 N.W.2d 156 (1986). More specifically, "Officers may stop an automobile if they have an articulable and reasonable suspicion that ... either the vehicle or an occupant is ... subject to seizure for violation of law." *Id.* (quoted source omitted).

Section 346.37(1)(b), STATS., states, "When shown with or following the green, traffic facing a yellow signal shall stop before entering the intersection unless so close to it that a stop may not be made in safety." The arresting officer, stopped at the red light at the same intersection, testified that Masrud was traveling at the posted speed limit of 45 m.p.h. and entered the intersection after the traffic signal had turned yellow. According to the officer's testimony at the suppression hearing, Masrud did not slow down before entering the intersection and was halfway through the intersection when the light turned red. He also testified that, in his opinion, Masrud had "adequate time and distance" to come to a stop safely before entering the intersection. And while the officer believed Masrud's actions to be "a pretty overt violation" of the statute, he decided not to arrest Masrud for the violation but to stop him and point out what he believed to be poor judgment in not stopping.

Masrud argues that because the officer could not state the exact distance he was from the light when it turned yellow, and given the speed of the car at the time, "the officer could not speculate as to whether the car might

have been able to stop if it had attempted to." As a result, Masrud maintains, "it is clear there was not [] reasonable grounds for the officer's [action]."

We think the *Washington* test was met. We agree with the State that, given the officer's testimony, Masrud could have safely stopped before entering the intersection--an observation corroborated, to a degree at least, by the fact that the light turned red when Masrud was only midway through the intersection (traveling at an undiminished 45 m.p.h.).

Masrud points to an inconsistency in the officer's testimony. At the suppression hearing the officer testified that Masrud "proceeded through the intersection without slowing down"; at trial the officer stated that sometime after the light turned yellow "I noticed there was a slowing down and then he proceeded through the intersection and prior to getting to the halfway mark it changed to red." We do not see that discrepancy as warranting reversal for two reasons.

First, it does not appear from the record that Masrud ever asked the trial court to resolve what he claims to be the officer's testimonial conflict. We adhere to the rule that it is for the trial court--the judge who heard the testimony and had the opportunity to observe the demeanor of the witnesses--to resolve perceived conflicts in the testimony. *Estate of Dejmal*, 95 Wis.2d 141, 151-52, 289 N.W.2d 813, 818 (1980).

Second, even if Masrud had slowed down somewhat as he entered the intersection, the fact remains, according to the officer's testimony, that Masrud could have brought his vehicle to a safe stop before entering the intersection.

We conclude, therefore, that specific articulable facts, and inferences from those facts, existed to establish reasonable grounds for the officer to believe that Masrud had violated § 346.37(1)(b), STATS., by failing to stop when the light turned yellow, under circumstances where it does not appear that, at the time, he was so close to the signal that he could not safely do so.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.